
SENATE BILL No. 512

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-4.

Synopsis: Town government. Provides a procedure for changing a town into a city. Provides that a town may be changed into a city if the voters of the town approve a public question on changing the town into a city. Authorizes the town legislative body to provide by ordinance for the details of the conversion of the town into a city. Authorizes a town that began conversion into a city under existing law to complete conversion under the new statute. Reduces the number of landowners necessary or the amount of assessed valuation necessary to remonstrate against an annexation. Repeals the statute that requires a town to obtain the consent of certain cities to annex territory. Repeals current statutes governing conversion of a town into a city.

Effective: January 1, 2004 (retroactive); July 1, 2005.

Drozda, Long, Gard, Lewis

January 18, 2005, read first time and referred to Committee on Governmental Affairs and Interstate Cooperation.

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Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

SENATE BILL No. 512

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 36-4-1-9 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2005]: Sec. 9. The validity of the prior acts,
3 contracts, and obligations of a ~~municipality~~ **city** that changes its status,
4 name, or classification under this chapter is not affected by that change.
5 The ordinances, rules, and regulations of the ~~municipality~~ **city** continue
6 in effect until amended or repealed.
- 7 SECTION 2. IC 36-4-1.5 IS ADDED TO THE INDIANA CODE
8 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
9 JULY 1, 2005]:
- 10 **Chapter 1.5. Changing a Town Into a City**
11 **Sec. 1. (a) A town may be changed into a city only as provided**
12 **in this chapter.**
13 **(b) A town with a population of less than two thousand (2,000)**
14 **may not be changed into a city.**
15 **Sec. 2. A town may be changed into a city through the following:**
16 **(1) The town legislative body must adopt a resolution**
17 **submitting to the town's voters the question of whether the**



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town should be changed into a city. The town legislative body shall adopt a resolution described in this subdivision if at least the number of registered voters of the town equal to ten percent (10%) of the total votes cast in the town at the last election for secretary of state sign a petition requesting the town legislative body to adopt such a resolution. In determining the number of signatures required under this subdivision, any fraction that exceeds a whole number shall be disregarded.

(2) A resolution adopted under subdivision (1) must fix the date for an election on the question of whether the town should be changed into a city. If the election is to be a special election, the date must be:

(A) not less than thirty (30); and

(B) not more than sixty (60);

days after the notice of the election. If the election is to be on the same date as a general election, the resolution must state that fact and be certified in accordance with IC 3-10-9-3.

(3) The town legislative body shall file a copy of the resolution adopted under subdivision (1) with the circuit court clerk of each county in which the town is located. The circuit court clerk shall immediately certify the resolution to the county election board.

(4) The county election board shall give notice of the election in the manner prescribed by IC 3-8-2-19. IC 3-10-6 applies to the election.

(5) The question described in subdivision (1) shall be placed on the ballot in the form prescribed by IC 3-10-9-4. The text of the question shall be: "Shall the town of _____ change into a city?".

(6) If a majority of the voters voting on the question described in subdivision (1) vote "yes", the town is changed into a city as provided in this chapter. If a majority of the voters voting on the question vote "no", the town remains a town.

Sec. 3. (a) A town legislative body may satisfy the requirements of this section in an ordinance adopted either before or after the town's voters vote on the question described in section 2 of this chapter.

(b) If a resolution is adopted under section 2 of this chapter, the town legislative body shall adopt an ordinance providing for the transition from governance as a town to governance as a city. The ordinance adopted under this section must include the following

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1 details:

2 (1) A division of the town into city legislative body districts as
3 provided in the applicable provisions of IC 36-4-6.

4 (2) Provisions for the election of the following officers:

5 (A) The city executive.

6 (B) The members of the city legislative body.

7 (C) The city clerk or city clerk-treasurer as appropriate
8 under IC 36-4-10.

9 (3) The date of the first election of the city officers. The first
10 election may be held only on the date of a general election or
11 a municipal election. Candidates for election to the city offices
12 shall be nominated:

13 (A) at the corresponding primary election during a general
14 election year or a municipal election year; or

15 (B) as otherwise provided in IC 3.

16 (4) Subject to section 4 of this chapter, the term of office of
17 each city officer elected at the first election of city officers.

18 (5) Any other details the town legislative body considers
19 useful in providing for the transition of the town into a city.

20 (c) An ordinance adopted under this section is effective only if
21 the voters of the town approve the conversion of the town into a
22 city under section 2(6) of this chapter.

23 (d) The provisions of an ordinance adopted under this section
24 are subject to all other laws governing the structure of city
25 government.

26 (e) Subject to this chapter, the town legislative body or the city
27 legislative body (after the town is changed into a city) may amend
28 an ordinance adopted under this section.

29 Sec. 4. (a) Notwithstanding any other law, the term of office of
30 the city officers elected at the first election of city officers held
31 under the ordinance adopted under section 3 of this chapter:

32 (1) begins on January 1 after the first election of city officers;
33 and

34 (2) may not extend after December 31 of the next municipal
35 election year that occurs after the first election of city officers.

36 (b) The ordinance adopted under section 3 of this chapter may
37 provide for a shorter term of office for specified members of the
38 city legislative body to stagger terms as permitted under IC 3 and
39 IC 36-4-6 if a general election will occur before the next municipal
40 election after the first election of city officers.

41 (c) After the first municipal election after the first election of
42 city officers, the term of office of each city officer is four (4) years.

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1 **Sec. 5. A town becomes a city under this chapter on January 1**
 2 **after the first election of city officers under section 4 of this**
 3 **chapter.**

4 **Sec. 6. (a) The acts, contracts, and obligations of a town that is**
 5 **changed into a city under this chapter become the acts, contracts,**
 6 **and obligations of the city.**

7 **(b) The ordinances, rules, and regulations of a town that is**
 8 **changed into a city under this chapter continue in effect as**
 9 **ordinances, rules, and regulations of the city until amended or**
 10 **repealed.**

11 **SECTION 3. IC 36-4-3-11 IS AMENDED TO READ AS**
 12 **FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]:**
 13 **Sec. 11. (a) Except as provided in section 5.1(i) of this chapter and**
 14 **subsection (d), whenever territory is annexed by a municipality under**
 15 **this chapter, the annexation may be appealed by filing with the circuit**
 16 **or superior court of a county in which the annexed territory is located**
 17 **a written remonstrance signed by:**

18 (1) at least ~~sixty-five~~ **fifty-one** percent ~~(65%)~~ **(51%)** of the
 19 owners of land in the annexed territory; or

20 (2) the owners of more than ~~seventy-five~~ **sixty-five** percent ~~(75%)~~
 21 **(65%)** in assessed valuation of the land in the annexed territory.

22 The remonstrance must be filed within ninety (90) days after the
 23 publication of the annexation ordinance under section 7 of this chapter,
 24 must be accompanied by a copy of that ordinance, and must state the
 25 reason why the annexation should not take place.

26 (b) On receipt of the remonstrance, the court shall determine
 27 whether the remonstrance has the necessary signatures. In determining
 28 the total number of landowners of the annexed territory and whether
 29 signers of the remonstrance are landowners, the names appearing on
 30 the tax duplicate for that territory constitute prima facie evidence of
 31 ownership. Only one (1) person having an interest in each single
 32 property, as evidenced by the tax duplicate, is considered a landowner
 33 for purposes of this section.

34 (c) If the court determines that the remonstrance is sufficient, it shall
 35 fix a time, within sixty (60) days of its determination, for a hearing on
 36 the remonstrance. Notice of the proceedings, in the form of a summons,
 37 shall be served on the annexing municipality. The municipality is the
 38 defendant in the cause and shall appear and answer.

39 (d) If an annexation is initiated by property owners under section 5.1
 40 of this chapter and all property owners within the area to be annexed
 41 petition the municipality to be annexed, a remonstrance to the
 42 annexation may not be filed under this section.

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SECTION 4. IC 36-4-3-13 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]:
Sec. 13. (a) Except as provided in subsections (e) and (g), at the
hearing under section 12 of this chapter, the court shall order a
proposed annexation to take place if the following requirements are
met:

(1) The requirements of either subsection (b) or (c).

(2) The requirements of subsection (d).

(b) The requirements of this subsection are met if the evidence
establishes the following:

(1) That the territory sought to be annexed is contiguous to the
municipality.

(2) One (1) of the following:

(A) The resident population density of the territory sought to
be annexed is at least three (3) persons per acre.

(B) Sixty percent (60%) of the territory is subdivided.

(C) The territory is zoned for commercial, business, or
industrial uses.

(c) The requirements of this subsection are met if the evidence
establishes the following:

(1) That the territory sought to be annexed is contiguous to the
municipality as required by section 1.5 of this chapter, except that
at least one-fourth (1/4), instead of one-eighth (1/8), of the
aggregate external boundaries of the territory sought to be
annexed must coincide with the boundaries of the municipality.

(2) That the territory sought to be annexed is needed and can be
used by the municipality for its development in the reasonably
near future.

(d) The requirements of this subsection are met if the evidence
establishes that the municipality has developed and adopted a written
fiscal plan and has established a definite policy, by resolution of the
legislative body as set forth in section 3.1 of this chapter. The fiscal
plan must show the following:

(1) The cost estimates of planned services to be furnished to the
territory to be annexed. The plan must present itemized estimated
costs for each municipal department or agency.

(2) The method or methods of financing the planned services. The
plan must explain how specific and detailed expenses will be
funded and must indicate the taxes, grants, and other funding to
be used.

(3) The plan for the organization and extension of services. The
plan must detail the specific services that will be provided and the

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dates the services will begin.

(4) That planned services of a noncapital nature, including police protection, fire protection, street and road maintenance, and other noncapital services normally provided within the corporate boundaries, will be provided to the annexed territory within one (1) year after the effective date of annexation and that they will be provided in a manner equivalent in standard and scope to those noncapital services provided to areas within the corporate boundaries regardless of similar topography, patterns of land use, and population density.

(5) That services of a capital improvement nature, including street construction, street lighting, sewer facilities, water facilities, and stormwater drainage facilities, will be provided to the annexed territory within three (3) years after the effective date of the annexation in the same manner as those services are provided to areas within the corporate boundaries, regardless of similar topography, patterns of land use, and population density, and in a manner consistent with federal, state, and local laws, procedures, and planning criteria.

(e) At the hearing under section 12 of this chapter, the court shall do the following:

(1) Consider evidence on the conditions listed in subdivision (2).

(2) Order a proposed annexation not to take place if the court finds that all of the following conditions exist in the territory proposed to be annexed:

(A) The following services are adequately furnished by a provider other than the municipality seeking the annexation:

(i) Police and fire protection.

(ii) Street and road maintenance.

(B) The annexation will have a significant financial impact on the residents or owners of land.

(C) The annexation is not in the best interests of the owners of land in the territory proposed to be annexed as set forth in subsection (f).

(D) One (1) of the following opposes the annexation:

(i) At least ~~sixty-five~~ **fifty-one** percent ~~(65%)~~ **(51%)** of the owners of land in the territory proposed to be annexed.

(ii) The owners of more than ~~seventy-five~~ **sixty-five** percent ~~(75%)~~ **(65%)** in assessed valuation of the land in the territory proposed to be annexed.

Evidence of opposition may be expressed by any owner of land in the territory proposed to be annexed.

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(f) The municipality under subsection (e)(2)(C) bears the burden of proving that the annexation is in the best interests of the owners of land in the territory proposed to be annexed. In determining this issue, the court may consider whether the municipality has extended sewer or water services to the entire territory to be annexed:

(1) within the three (3) years preceding the date of the introduction of the annexation ordinance; or

(2) under a contract in lieu of annexation entered into under IC 36-4-3-21.

The court may not consider the provision of water services as a result of an order by the Indiana utility regulatory commission to constitute the provision of water services to the territory to be annexed.

(g) This subsection applies only to cities located in a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000). However, this subsection does not apply if on April 1, 1993, the entire boundary of the territory that is proposed to be annexed was contiguous to territory that was within the boundaries of one (1) or more municipalities. At the hearing under section 12 of this chapter, the court shall do the following:

(1) Consider evidence on the conditions listed in subdivision (2).

(2) Order a proposed annexation not to take place if the court finds that all of the following conditions exist in the territory proposed to be annexed:

(A) The following services are adequately furnished by a provider other than the municipality seeking the annexation:

(i) Police and fire protection.

(ii) Street and road maintenance.

(B) The annexation will have a significant financial impact on the residents or owners of land.

(C) One (1) of the following opposes the annexation:

(i) A majority of the owners of land in the territory proposed to be annexed.

(ii) The owners of more than seventy-five percent (75%) in assessed valuation of the land in the territory proposed to be annexed.

Evidence of opposition may be expressed by any owner of land in the territory proposed to be annexed.

(h) The most recent:

(1) federal decennial census;

(2) federal special census;

(3) special tabulation; or

(4) corrected population count;

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1 shall be used as evidence of resident population density for purposes
2 of subsection (b)(2)(A), but this evidence may be rebutted by other
3 evidence of population density.

4 SECTION 5. THE FOLLOWING ARE REPEALED [EFFECTIVE
5 JULY 1, 2005]: IC 36-4-1-3; IC 36-4-1-4; IC 36-4-1-4.1; IC 36-4-1-5;
6 IC 36-4-3-9.

7 SECTION 6. [EFFECTIVE JULY 1, 2005] (a) **A town that began**
8 **conversion into a city under IC 36-4-1, as in effect before July 1,**
9 **2005, may complete its conversion into a city under IC 36-4-1.5, as**
10 **added by this act.**

11 (b) **This SECTION expires July 1, 2009.**

12 SECTION 7. **An emergency is declared for this act.**

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